



NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS

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STATEMENT

before the

COMMITTEE

ON

POST OFFICE AND CIVIL SERVICE

UNITED STATES HOUSE OF REPRESENTATIVES

Ninety-ninth Congress

THE HONORABLE WILLIAM D. FORD

CHAIRMAN

on

HOW THE SUPPLEMENTAL RETIREMENT PLAN

SHOULD TREAT UNIQUE EMPLOYMENT CATEGORIES

EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION

DEPARTMENT OF TRANSPORTATION

by

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Mr. Chairman and Distinguished Members of this Subcommittee, I am grateful that you have provided me with the opportunity to appear before you and to express my thoughts and opinions relative to early retirement benefits for Air Traffic Control Specialists. I am accompanied by Mr. Edward L. Huie, our Director of Legislative Affairs.

These hearings are most timely since all issues relating to Federal employee retirement are under consideration by this Congress. We believe that the issue before you is one of air safety.

The Flight Service System is an integral part of the Air Traffic Control System and there are about 317 flight service stations throughout the United States. The personnel who staff the Air Traffic Control System are designated by the Office of Personnel Management as Series 2152 and are called:

- . Air Traffic Control Specialists (Station).

This category is the least understood of all the categories because of the lack of term standardization and the widespread use of colloquialisms. FAA, and others as well, confuse the issue by referring to this category as Flight Service Specialists, Specialists, Flight Service Station Specialists, Station Specialists, Station Personnel, Station Controllers, Controllers and Specialists. It is so confusing that uninformed persons sometimes infer that these are the personnel who fuel and maintain aircraft. For NAATS this is an overwhelming educational burden. An example is included as Attachment (1)

hereto. (FAA news release dated March 5, 1985--FAA 10-85).

The other two categories are:

- . Air Traffic Control Specialists (Terminal)
- . Air Traffic Control Specialists (Center)

This Association is designated by the Secretary of Labor as the exclusive representative of all the bargaining unit members who are Air Traffic Control Specialists (Station) Series 2152.

At this point I must make it very clear that Air Traffic Control Specialists (Station), employees represented by this Association, are not covered by the provisions of Public Law 92-297 and are not entitled to early retirement benefits. It is for this reason that we are particularly honored that you have requested our views on this important subject.

In the 96th Congress this Committee favorably reported (Report 96-726 Part 1) HR 1262 which sought, among other objectives, to provide early retirement for Air Traffic Control Specialists (Station). For that favorable action we are extremely grateful to the Full Committee and also to the Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits. The diligence on the part of the Members and the Staff enabled the Committee to have a full technical understanding of the Air Traffic Control System in detail far, far beyond the important broad policy decisions which the Members are normally expected to address.

But, Mr. Chairman, we are not here to argue the merits of including Air Traffic Control Specialists (Station) in the unique category of Federal Workers who are eligible to retire at earlier ages without penalty, even though we must touch upon that subject when setting forth our position in addressing your questions.

We are blessed that the Chair, Subcommittee on Compensation and Employee Benefits, is endeavoring to schedule hearings on this matter at a later date even though, as we see it, the many issues before that Subcommittee are overwhelming.

We are here to discuss the searching questions you raised in your letter to us dated March 19, 1985.

1. Whether special treatment for these unique categories should be continued and, if it should, in what form?

We believe in general that the special treatment of these employees should be continued because of the arguments set forth during the Congressional hearings incident to the enactment of Public Law 92-297 (applies only to Air Traffic "Controllers").

We do take exception to the existing form of this program because we believe it to be faulty and unjust due to the exclusion of Air Traffic Control Specialists (Station) from the coverage provided by the law. The coverage for the program is contained in 5 U.S.C. 2109

"§ 2109. Air traffic controller; Secretary
For the purpose of this title--

(1) "air traffic controller" or "controller" means an employee of the Department of Transportation or the Department of Defense who, as determined under

regulations prescribed by the Secretary, is actively engaged in the separation and control of air traffic, or is the immediate supervisor of an employee actively engaged in the separation and control of air traffic, in an air traffic control facility; and

(2) "Secretary", when used in connection with "air traffic controller" or "controller", means the Secretary of Transportation with respect to controllers in the Department of Transportation, and the Secretary of Defense with respect to controllers in the Department of Defense."

It is noted that this statute was amended in 1980 by Public Law 96-347 to add "air traffic controller" or "controller" who is an employee of the Department of Defense; an omission in PL 92-297.

Personnel in Air Traffic are frequently called "Controllers" by FAA and others as well, and one might infer that they actually control aircraft in the ordinary sense of the word "control." Federal Aviation Administration Regulation 91.3(a) clearly states, "The pilot in command of an aircraft is directly responsible for, and is the final authority as to the operation of that aircraft."

If responsibility for operation of the aircraft is vested in the "pilot in command" as the FAA has prescribed, then control and separation can only be exercised by the pilot and not by an FAA employee located on the ground in some faraway place using a radarscope (an inexact instrument at best even when operating at peak efficiency).

Additionally, we have all heard of radar "outages" in recent years, an event upon which the news media thrives. Of course, when there is an "outage" the FAA ground personnel

can provide no radar information to the pilot at all. The Federal Aviation Administration has, therefore, wisely placed all command, control and separation squarely on the shoulders of the pilot because there is no other place where this awesome responsibility can be lodged.

On such a basis, we believe that responsibility for the safety of that aircraft cannot be shared, and that control can only be exercised in the cockpit.

We can provide no better example of this than the near miss between two jumbo jet aircraft on March 31, 1985, at Minneapolis, MN, with a combined total of 500 people aboard. While the National Transportation Safety Board has not rendered its report, Chairman Burnett and other Safety Board personnel have been widely quoted by the news media. "Both crews were executing the air traffic control instructions they were provided, no question", according to Michael O'Rourke, investigator in charge for the Safety Board.

However, one pilot in command disregarded the "controller instructions" and acted on his own, and within his authority and responsibility, and avoided what could have been a disaster reminiscent of the world's worst aviation disaster when 577 people were killed in Tenerife, Canary Islands, in 1977 in a similar crossing situation.

This is not to say that the FAA employee on the ground has no responsibility, for he does have the responsibility for carrying out the assigned duties of that position which are: to

provide information, make recommendations and to warn the pilot of other objects in the areas as seen on his radarscope. He cannot in any way interfere with the prerogatives of command, which can be no less than absolute.

Nevertheless, we have heard in past hearings, and probably in this one as well, the FAA witness state that station personnel are not qualified for early retirement because they do not control and separate aircraft. We hasten to add that no FAA employee on the ground controls and separates aircraft, with the exception of the operation of a drone aircraft (no pilot) and, in this case, control is exercised from a ground position or from another vehicle. An example of this was the recent intentional crash of FAA aircraft in the desert for reasons of research. In that specific case, FAA employees on the ground did, in fact, exercise the prerogatives of command, control and separation. This is the only example that has come to our attention, where control and separation has been experienced by FAA ground personnel.

In FAA's recent report to the Congress entitled "FY 1985-87 Planned Office and Facility Consolidations--To Improve System Effectiveness and Efficiency", dated December 1, 1984, the functions and mission of the flight service stations are set forth as follows:

"Flight Service Station (FSS). Flight service stations offer a broad range of pre-flight and in-flight services aimed at general aviation (or non-airline) pilots. These services include conducting pre-flight weather briefings for pilots and accepting and closing flight

plans, primarily through telephone and radio communications. Additionally, FSS's provide enroute communications with pilots flying under Visual Flight Rules (VFR), assist pilots in distress, work with search and rescue units in locating missing aircraft, assist lost aircraft and aircraft in emergency situations, monitor radio navigation stations, relay air traffic control (ATC) clearances, originate Notices to Airmen, broadcast aviation weather and National Airspace System (NAS) information, receive and process Instrument Flight Rules (IFR) flight plans, and monitor radio air navigations facilities (NAVAIDS). In addition, at selected locations, FSS's provide enroute flight advisory service (Flight Watch), take weather observations, issue airport advisories, and advise Customs and Immigration of transborder flights. The FSS's also have communications equipment for relaying information to air traffic towers and control centers and for various emergency services. Flight service stations are under the general direction of regional Air Traffic Divisions and Washington headquarters."

This statement of mission and function deserves careful study:

- . In the first sentence, the FAA attempts to downgrade our service by eliminating scheduled airline pilots as one of the users of flight service information. While the service may be aimed at general aviation pilots, the truth is that scheduled carriers are very frequent users of flight service products.
- . The word "emergency" is used twice.

Other phrases:

- . Assist pilots in distress.
- . Work with search and rescue units in locating missing aircraft.
- . Assist lost aircraft and aircraft in emergency situations.
- . Advise Customs and Immigration of transborder flights (includes drug and narcotics interdiction-- added).

It is very significant that 45.7 percent (1985 House Appropriations Hearings, Part 6, page 641) of all flight assists

were made by Air Traffic Control Specialists (Station) while the system was endowed with only 18 percent of the total personnel positions in the Air Traffic Control System. To us, this looks like our people work in an environment where there are more opportunities to provide assistance for safe flight.

Flight assists are usually emergency situations where the pilot, passengers and aircraft are in jeopardy.

We believe that emergency situations create a tense working environment which requires the utmost from the journeyman in time-critical situations where superior judgment is required.

In this matter, we believe that the Federal Aviation Administration itself has expressed the strains upon the Air Traffic Control Specialists (Station) far more eloquently than we ourselves can express it. In the case of "Marvin A. Miyai (an Air Traffic Control Specialist (Station)) v. Federal Aviation Administration" before the United States Merit Systems Protection Board at a hearing dated February 7, 1985 (Docket No. SF07528510116), Mr. Malachy T. Coghlan for the FAA said of Mr. Miyai's job:

"There are few jobs that require more alertness of mind, more sound judgement, [sic] the ability to assimilate information, and the ability to make split second decisions. The stresses and the strains of the job are incalculable. And there are very few people who can perform in that position."

Accordingly, we hold that the law makes a distinction without a difference and that Air Traffic Control Specialists

(Station) should be included within the definition set forth in 5 U.S.C. 2109 and the language should be couched to show that those employees covered make recommendations and provide information to aircraft operators relative to air traffic and air safety.

Our complete prepared statement (draft) for the Subcommittee on Compensation and Employee Benefits on the merits of including Air Traffic Control Specialists (Station) in the unique categories of Federal employees is available to you upon your request.

2. Should the current age and service requirements be continued?

The maximum-age entrance requirements are set forth in 5 U.S.C. 3307.

"§ 3307. Competitive service; maximum-age entrance requirements; exceptions

(a) Except as provided in subsections (b), (c), and (d) of this section, appropriated funds may not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

(b) The Secretary of Transportation may, with the concurrence of such agent as the President may designate, determine and fix the maximum limit of age within which an original appointment to a position of an air traffic controller may be made."

While we find few areas in which we can agree with the Director, Office of Personnel Management, we must, in all fairness, point out that in response to our request he (as Presidential Agent) did in fact, in concert with the Secretary of Transportation, change upward the entry age barrier

(5 U.S.C. 3307) into the options of Air Traffic Control Specialists (Center, Tower) so that many of our journeymen could transfer into higher paid positions and achieve early retirement benefits, while effectively employing their acquired skills for the benefit of the Government.

5 U.S.C. 3307, we believe, is sufficient and provides flexibility for the Government to adjust the maximum entry age to meet the requirements of a current situation.

The service for an Air Traffic Control Specialist is outlined in 5 U.S.C. 8336.

"(e) An employee who is voluntarily or involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service as an air traffic controller or after becoming 50 years of age and completing 20 years of service as an air traffic controller, is entitled to an annuity."

The service requirements, in this case, are in line with and are compatible with other groups of unique category employees and we recommend that these requirements be continued.

3. Is there still a need for mandatory retirement provisions?

This provision is contained in 5 U.S.C. 8335 quoted below:

"§ 8335. Mandatory separation

(a) An air traffic controller shall be separated from the service on the last day of the month in which he becomes 56 years of age. The Secretary, under such regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary shall notify the controller in writing of the date of separation at least 60 days before that date.

Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires."

We have no quarrel with the provisions of this statute. We do believe because of our own convictions, the wisdom of Congress, and because of arguments and studies of the past, that an Air Traffic Control Specialist should not serve after he becomes 61 years of age. The age of 56 specified in the statute has little meaning since the Secretary of Transportation has broad authority to separate the journeyman any time between the 56th and 61st anniversary of birth and accordingly protect the interest of the Government. Even now there are retired annuitant journeymen specialists working full time for the Federal Aviation Administration who were previously early-retired under the provisions of Public Law 92-297. We would defer to the FAA as to the ages of these workers.

4. If early retirement is continued, should we somehow compensate early retirees for the fact that Social Security benefits will not begin until age 62?

There is one other area where we are in agreement with the Director of OPM and it answers the question you pose, Mr. Chairman. It is contained in the draft Speaker letter without date which he submitted to you with his statement of April 2, 1985, and is quoted:

"- Early retirement would continue to be permitted for law enforcement officers, firefighters, and air traffic controllers. In order to make early retirement feasible, a special supplement will be paid to those employees until Social Security begins at age

62. These special benefits will be pre-funded through a surcharge to agencies employing each of these special employees."

We believe this to be an excellent course of action and if computed on an actuarially sound basis would not increase the cost to the Government over the cost provided in existing statutes for early retirement; in fact, it may be less.

Thank you, Mr. Chairman and Members of the Committee.